No. 84-494

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1984

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

MACHINISTS LOCAL 1327, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO DISTRICT LODGE 115, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To
The United States Court Of Appeals For
The Ninth Circuit

MEMORANDUM FOR RESPONDENT INDIVIDUAL EMPLOYEES AND MOTION TO EXPEDITE CONSIDERATION OF PETITIONS FOR CERTIORARI AND TO CONSOLIDATE WITH NO. 83-1894 AND NO. 84-528

RAYMOND J. LaJEUNESSE, JR.
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
(703) 321-8510

Counsel of Record for Respondents
Viola Lapinski, Hilda Hall,
Polmyra Gomes, and Robert Ferguson

October 10, 1984

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1. Respondents Viola Lapinski, Hilda Hall, Polmyra L. Gomes, and Robert C. Ferguson are the individual employees who were the charging parties before the National Labor Relations Board ("the Board") and intervened in the case in the court of appeals. It is their statutory right to refrain from union activity which has been abridged erroneously by the decision of the court of appeals; and they have filed their own separate petition for a writ of certiorari. *Lapinski v. Machinists Local 1327*, No. 84-528 (U.S. filed Oct. 1, 1984). Accordingly,

the employees urge that the Board's petition, as well as their own, be granted.

2. As the Board points out, the decision of the court of appeals that a union constitution lawfully may restrict resignations immediately preceding and during a strike is "in direct conflict with the decision of the Seventh Circuit in *Pattern Makers League v. NLRB*, 724 F.2d 57 (7th Cir. 1983)." Petition for a Writ of Certiorari at 7, *NLRB v. Machinists Local 1327*, No. 84-494 (U.S. filed Sept. 27, 1984). The Court granted certiorari in *Pattern Makers* on October 1, 1984. 53 U.S.L.W. 3235 (U.S. No. 83-1894).

The Court could, of course, defer consideration of the petition in this case pending the disposition of *Pattern Makers*. However, there are two reasons for granting certiorari in this case at this time.

First, although we believe that *Pattern Makers* and this case present the same legal question,[1] the union constitutional provisions restricting the right to resign are not identical. The rule of the Pattern Makers' League entirely prohibits any resignation immediately preceding and during a strike. *Pattern Makers*, 724 F.2d at 58. The Machinists union's provision prohibits a resignation during the same period only for the purpose of returning to work for a struck employer. Petition for a Writ of Certiorari, Appendix A at 3a, *NLRB v. Machinists*

[1] The Board and the Pattern Makers' League agree. *See* Petition for a Writ of Certiorari at 8 n.7, *NLRB v. Machinists Local 1327*; Petition for a Writ of Certiorari at 8, *Pattern Makers v. NLRB*. The Machinists and Pattern Makers had the same lead counsel in the courts of appeals. *Machinists Local 1327 v. NLRB*, 725 F.2d 1212, 1214 (9th Cir. 1984); *Pattern Makers*, 724 F.2d at 58.

Local 1327. The Ninth Circuit attached some significance to this distinction. *See id.* at 10a. This Court should have both provisions before it at the same time so that with a single decision it can establish that neither restriction upon employees' freedom of association is permitted by the National Labor Relations Act, 29 U.S.C. §§ 157, 158(b)(1)(A) (1982).

Second, the persons whose interests are directly affected by a union restriction upon resignation, the individual employees fined for returning to work during a strike, are not parties in *Pattern Makers*, whereas they are in this case.[2] Although both the Board and the employees contend that unions cannot lawfully restrict resignations, they have separate interests, since the Board's role is primarily that of an administrative agency charged with representing the public interest. *See Automobile Workers, Local 283 v. Scofield*, 382 U.S. 205 (1965). Participation of the employees whose individual rights are at stake will provide the Court with a complete perspective on the question of statutory interpretation presented in these cases.

3. The briefs in *Pattern Makers* are due to be filed in November and December 1984, and the case presumably will be set for argument later in this Term. Because the parties and the union constitutional provisions in *Pattern Makers* are not identical to those in the *Machinists Local 1327* cases, we do not believe that all three cases should be consolidated for briefing. However, it would

[2] The charging party-intervenor in *Pattern Makers* is an employer association. 724 F.2d at 58; Petition for a Writ of Certiorari, Appendix at 25a, *Pattern Makers*.

be appropriate for the Court to consolidate these cases with *Pattern Makers* for oral argument in order to facilitate the Court's consideration of the common legal issue.

Therefore, for the foregoing reasons, the respondent employees respectfully move that the Court expedite its consideration of the petitions herein and in No. 84-528 and grant certiorari and consolidate them for all purposes, such that they may be briefed in time to be argued together with *Pattern Makers*. The employees further move that, in the event certiorari is granted herein and in No. 84-528, the cases be consolidated for oral argument with No. 83-1894.

Respectfully submitted,

RAYMOND J. LaJEUNESSE, JR.
National Right to Work Legal
Defense Foundation, Inc.
8001 Braddock Road, Suite 600
Springfield, Virginia 22160
(703) 321-8510

Counsel of Record for Respondents
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